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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 June 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Peru Must Urgently Address Concerns of UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises

At its 38th regular session, the UN Human Rights Council (HRC) will have before it the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Peru from 10 to 19 July 2017, where it visited Lima and various locations in Amazonian and Andean regions.[1]

Amnesty International welcomes the findings of the Working Group and commends its efforts in positively engaging with a wide range of civil society actors in Peru.

Human Rights Defenders

The Working Group findings reflect Amnesty International's own research, which concluded that human rights defenders (HRDs) who protest on the negative impacts of business activities could face stigmatization and misuse of the criminal system.[2]

The organization has documented increasing levels of violence such as harassment, stigmatization and physical attacks against HRDs raising concerns or opposing natural resource-exploitation projects. The organization has also observed that what lies at the root of many of these abuses is often a situation of high social tension generated by a lack of adequate participation, consultation and information regarding these projects.

Also in relation to natural resource-exploitation projects, the organization has documented a systemic lack of investigations and prosecutions for criminal acts against HRDs, leading to entrenched impunity.

Smear campaigns

Amnesty International has observed an increasing use of stigmatization and smear campaigns by governments and corporate representatives to harass and undermine HRDs. Our research has found a number of cases where stigmatizing language has been used against defenders in Peru. For example, representatives of the Yanacocha mining company have accused defender Máxima Acuña of being a squatter[3] although the issue of property ownership is still awaiting a judicial decision. This has not only damaged Máxima Acuña's image and reputation, but also undermined the legitimacy of her struggle at the national and community levels. Amnesty International raised this issue with Newmont, but the company provided no comments.

Criminalization

Amnesty International findings have shown that HRDs can face criminal proceedings for participating in protests and making critical voices heard regarding risks and concerns that may arise in business projects.[4]

As the Working Group report points out[5], on May 2017, after almost five years of proceedings in relation to unfounded criminal charges of land invasion against Maxima Acuña and her family, the Supreme Court of Justice ruled that there was no reason to pursue the charges of land invasion[6]. Since 2011, she and her family have been in a legal dispute with

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1 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Peru, A/HRC/38/48/Add.2, 9 May 2018.

2 Amnesty International, 2018. A recipe for criminalization defenders of the environment, territory and land in Peru and Paraguay. AMR 01/8158/2018.

3 Amnesty International. Peru: Human rights defender Maxima Acuña criminalized by unsubstantiated criminal prosecution for land invasion. AMR 46/5879/2017, 14 March 2017.

4 Amnesty International, 2018. A recipe for criminalization defenders of the environment, territory and land in Peru and Paraguay. AMR 01/8158/2018.

5 A/HRC/38/48/Add.2, para 37.

6 Amnesty International Peru: Peruvian authorities put an end to the criminalization of defender Maxima Acuña, 3 May 2017.

the mining company Yanacocha around the property and possession of the plot of land where they live. The mining company demanded the family to leave the land and relied on criminal and civil laws to remove their crops and gain ownership of the land.

In addition to that, Amnesty International has gathered information from local organizations that there are about 52 people charged in connection with several demonstrations and strikes connected to the Antaccapay expansion of the Tintaya mining project in the Cusco region.[7] An example of this situation is the case of Oscar Mollohuanca, Herbert Huamán and Sergio Huamaní, who are currently facing criminal proceedings. On 8 May, the Ica High Court of Justice overturned the first instance judgment of acquittal and ordered a new trial against the environmental defenders for the crimes of endangering public safety, obstructing public services and causing civil unrest.[8]

In the context of the Las Bambas mining operation, Amnesty International has gathered information that there are around 300 legal proceedings against HRDs since 2010 for crimes such as kidnapping, coercion or blocking communication channels. A similar situation is faced by HRDs in Cajamarca, where approximately 300 people are facing legal proceedings for opposing the Conga mining project due to its potentially harmful environmental consequences.[9]

Security forces and companies

Excessive use of force

The Working Group has stated that the high number of civilian deaths in social protests may imply a disproportionate use of force by public security forces. In addition, the Working Group has gathered information regarding the lack of investigation and impunity of those responsible for deaths in the protests.[10]

Amnesty International findings are consistent. In the past four years, at least 78 people have lost their lives in situations in which security forces have indiscriminately used force, including firearms, to suppress protests mainly related to large-scale business activities. It is unclear if these security forces were acting on behalf of companies at the time of these killings. In most cases, there is no record of progress in the investigation of these deaths, nor is there any knowledge that police elements have been suspended while the investigation is being conducted.[11]

Agreements between mining companies and the National Police

Evidence gathered by Amnesty International from HRDs who have participated in demonstrations related to the Conga project (Cajamarca), Las Bambas S.A. mine (Apurímac) and the Antapaccay expansion of the Tintaya mine (Cusco) point out that the implementation of this type of agreements has a negative impact on the perception of impartiality that police authorities must show in order to guarantee the protection of human rights.12 Amnesty International considers that the regulations that allow agreements to provide services between the National Police and private companies should be reviewed so as to avoid calling into question the impartiality of state agencies.

Health crisis due to toxic metals and other substances in indigenous communities

The human rights impacts of large-scale business activities identified by the Working Group in various communities and individuals refers to water pollution, the depletion of surface and groundwater and the presence of heavy metals in the blood of mining workers and local inhabitants, who have not been properly diagnosed with transparency or have

7 Amnesty International, 2018. A recipe for criminalization defenders of the environment, territory and land in Peru and Paraguay. AMR 01/8158/2018.

8 Amnesty International. Peru: Authorities are criminalizing human rights defenders by overturning judgement of acquittal, 10 May 2018.

9 Id. pp 29.

10 A/HRC/38/48/Add.2, para 76

11 Amnesty International, 2017. Peru: Nothing to celebrate amnesty international submission for the UN Universal Periodic Review – 28th session of the UPR Working Group, November 2017. AMR 46/6624/2017, pp. 8.

12 Amnesty International, 2018. A recipe for criminalization defenders of the environment, territory and land in Peru and Paraguay. AMR 01/8158/2018, pp 24.

received adequate medical treatment.[13] These situations have adverse effects on a series of human rights, including the rights to life, food, water and health.

Amnesty International has documented that the Indigenous Native Community of Cuninico, in the province and department of Loreto, and six Indigenous peasant communities in the province of Espinar, Cusco, are just some of the Indigenous communities in Peru that find themselves in a precarious health situation. Studies show that the main sources of water in these seven communities are contaminated with heavy metals and other chemical substances. In addition, medical tests have shown that the residents of these communities are exposed to heavy metals and other chemical substances which pose an imminent risk to their health.[14]

The government of Peru has a duty to remediate, monitor and provide medical care to those affected. Likewise, it should investigate and control the causes of contamination of water sources in indigenous communities, and taking into account that these communities are in areas of influence of large-scale infrastructure business activities for the transfer of oil and mining activity, respectively.[15]

Recommendation to the UN Human Rights Council

In light of the Working Group preliminary findings, Amnesty International urges the Human Rights Council, its Members and Observer States to:

- Call on the government of Peru to constructively engage with the Working Group and other UN special mechanisms to develop a National Business and Human Rights with full participation of communities, HRDs and civil society organizations based on the recommendations presented by the UN experts and civil society organizations. However, the government of Peru must not use the development of the NAP as an excuse to delay immediate action on corporate wrongdoing.
- Commit to guide the government of Peru to highlight that companies' human rights due diligence responsibilities should include ensuring that any public statements or communications by either the company or individual corporate executives are respectful of HRDs and their work, even of those who oppose or express concerns about their projects. This responsibility entails refraining from expressing views that stigmatize or discredit their work and can put them at risk of violence or exacerbate their vulnerability to it.
- Call on the government of Peru to commit to establishing mechanisms to protect HRDs and investigate human rights abuses and violations caused by, or resulting within the context of, large-scale business activities, in particular extractive and infrastructure projects, and by police excessive use of force during social protests. These mechanisms must be capable of ensuring that all allegations of human rights violations and abuses committed are investigated in a prompt, impartial, independent, thorough and effective manner, as well as be able to investigate overall patterns of abuse, policy and practice, identify those responsible at all levels and issue recommendations aimed at securing victims' right to justice, an effective remedy, including full reparation.
- Urge the government of Peru to refrain from using criminal law against HRDs as a way of criminalizing the defence of human right. In the same sense, guide corporations to oppose or refrain from instigating or pursuing other criminal proceedings with the potential to impact on the rights to freedom of expression, association and peaceful assembly, and engage with them to seek the least aggressive forms of dispute-settlement as part of their human rights due diligence responsibilities.

13 A/HRC/38/48/Add.2, para 39-41.

14 Amnesty International, 2017. A Toxic State: violations of the right to health of indigenous peoples in Cuninico and Espinar, Peru. AMR 46/7048/2017.

15 Id. pp. 12, 29.